

Attorney Docket No.: (10759-0159)

Serial No.: 10/072,042

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Cory O. Nykoluk

:

: Art Unit: 3727

:

: Examiner: Tri M. Mai

:

:

Serial No.: 10/072,042

Filed: February 5, 2002

:

For: PIVOTAL HANDLE FOR  
TOWABLE BAGGAGE

BEST AVAILABLE COPY

**DECLARATION UNDER 37 CFR 1.132**

Mail Stop: AF  
 P.O. Box 1450  
 Commissioner for Patents  
 Alexandria, VA 22313-1450

I, Todd Siwak, declare and state as follows:

1. I have reviewed and understand the specification and drawings of U.S. Application 10/072,042 (hereafter "Subject Application").
2. I have reviewed and understand the claims of the Subject Application (hereafter "Claimed Invention").
3. I was a founding partner/owner of TRG Accessories L.L.C. (hereafter "TRG") since TRG's inception prior to 2001, and am currently a senior manager within TRG.
4. I have reviewed and understand the subject matter described in U.S. Patent 6,508,344 to Lien Ching Lu, titled "Handle Structure for Turning and Adjusting Direction" issuing January 21, 2003 from application serial number 10/028,679 filed on December 28, 2001 (hereafter "Lu Patent").
5. I have reviewed and understand the subject matter described in U.S. Patent 6,530,459 to Lien Ching Lu, titled "Handle Structure for Adjusting Direction" issuing March 11, 2003 from application serial number 10/028,674 filed on December 28, 2001 (hereafter "Lu '459 Patent") (hereafter the Lu '344 Patent and the Lu '459 Patent shall collectively be referred to as the "Lu Patents").

Attorney Docket No.: (10759-0159)

Serial No.: 10/072,042

6. On information and belief, the named inventors of the Subject Application conceived of and reduced to practice the Claimed Invention of the Subject Application before December 28, 2001, the filing date of both Lu Patents.

### **FACTS AND DOCUMENTARY EVIDENCE**

7. Factual evidence proving the conclusions made in this Declaration can be found hereafter and in the attached documents (Appendices A-C).
8. At least as early as the middle of 2001, I became involved in a project at TRG to develop a new pivotal handle assembly (hereafter "TKO Handle System") for a towable piece of baggage.
9. My responsibilities at TRG, at least as early as the middle of 2001, included assisting the inventors of the Subject Application and TRG to identify a low-cost manufacturer for the TKO Handle System.
10. The named inventors on the Subject Application explained their concept(s) for the TKO Handle System to me at least as early as the middle of 2001.
11. The TKO Handle System explained to me, at least as early as the middle of 2001, by the inventors of the Subject Application embodied the Claimed Invention of the Subject Application.
12. Appendix A attached hereto includes a series of sketches, prepared on or about June 8, 2001, that illustrate the concepts for the TKO Handle Assembly and the Claimed Invention that were explained to me by the inventors of the Subject Application.
13. The sketches at appendix A illustrate, among other features, a baggage portion, an arm portion and a towing handle rotatably connected to the arm portion, a pivoting mechanism pivotally connecting the towing handle to the distal end of the arm such that the towing handle pivots generally about relative to the distal end of the arm, a locking mechanism being selectively moveable between a locked position and an unlocked position, wherein the locking mechanism prevents pivoting of the handle relative to the distal end of the arm when in the locked position and permits pivoting of the towing handle relative to the distal end of the arm when in the unlocked position.

Attorney Docket No.: (10759-0159)

Serial No.: 10/072,042

14. Appendix B attached hereto include a computer generated design drawing, prepared on or about August 9, 2001, that illustrate the concepts for the TKO Handle System and the Claimed Invention that were explained to me by the inventors of the Subject Application.
15. Appendix C attached hereto includes screen shots of a directory of files saved on a CD on or about October 17, 2001 including JPEG images constituting photographs taken on or about October 17, 2001 of a completed, operational prototype of the TKO Handle System that embodied the towing handle, arm, pivotal mechanism locking and mechanism of the Claimed Invention of the Subject Application, and was intended for use on a baggage portion.
16. On information and belief, prior to December of 2001, TRG contacted Lien Ching Lu in connection with determining whether Mr. Lu's company, Ting Cheng Co., Ltd. (hereafter "TC") would be a satisfactory manufacturer of the TKO Handle System.
17. On information and belief, TRG explained the TKO Handle System and Claimed Invention to Mr. Lu and other individuals at TC in order for TC to provide a proposal to manufacture the TKO Handle System.
18. On December 28, 2001, unknown to TRG, TC filed U.S. patent application 10/028,679 and U.S. patent application 10/028,674 (now the Lu Patents).
19. On February 5, 2002, TRG filed the Subject Application.
20. To the extent that the Lu '344 Patent includes subject matter describing the Claimed Invention of the Subject Application, Lien Ching Lu, the individual named as the inventor on the Lu '344 Patent, did not invent, and did not provide any inventive contribution to, such subject matter.
21. To the extent that the Lu '344 Patent includes subject matter describing the Claimed Invention of the Subject Application, Lien Ching Lu derived and copied such subject matter from the named inventors of the Subject Application.
22. To the extent that the Lu '344 Patent includes subject matter describing the Claimed Invention of the Subject Application, the Lu '344 Patent does not constitute prior art against the Claimed Invention, because the Lu '344 Patent describes the work of the inventors of the Subject Application, not the work of another person.

Attorney Docket No.: (10759-0159)

Serial No.: 10/072,042

**DECLARATION**


As the person signing below:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application and any patent issued thereon.

**SIGNATURE**

SOLE INVENTOR

Full Name: Todd Siwak

Signature: 

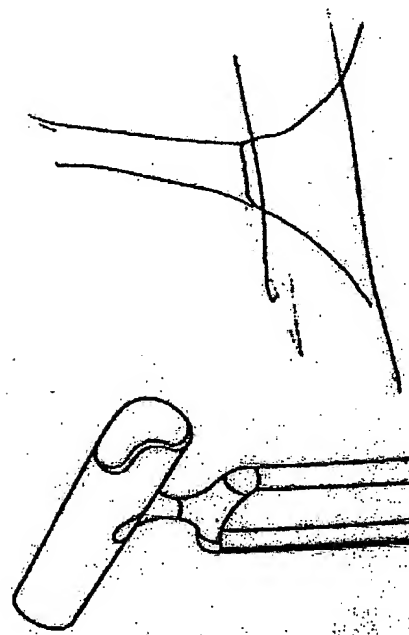
Date: 7-14-05

Residence: #3 DROMA ROAN ST. LOUIS MO 63124

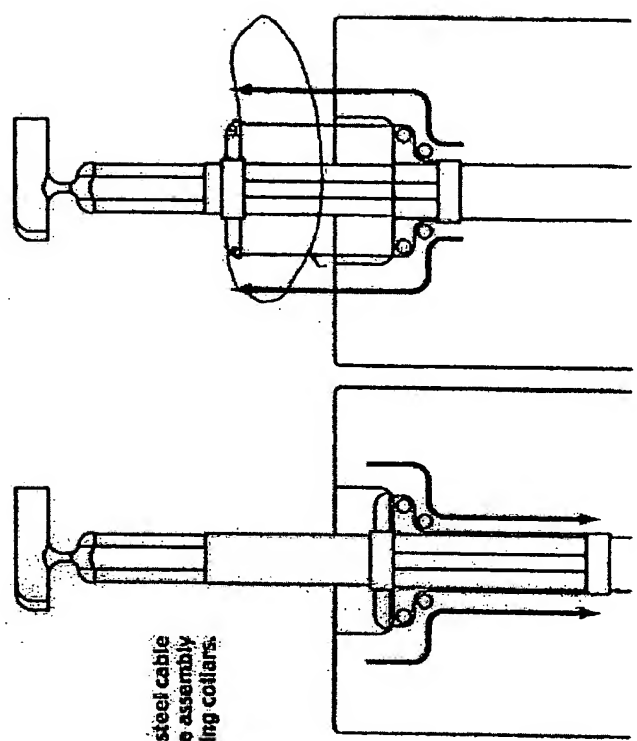
Citizenship: US

Post Office Address: \_\_\_\_\_

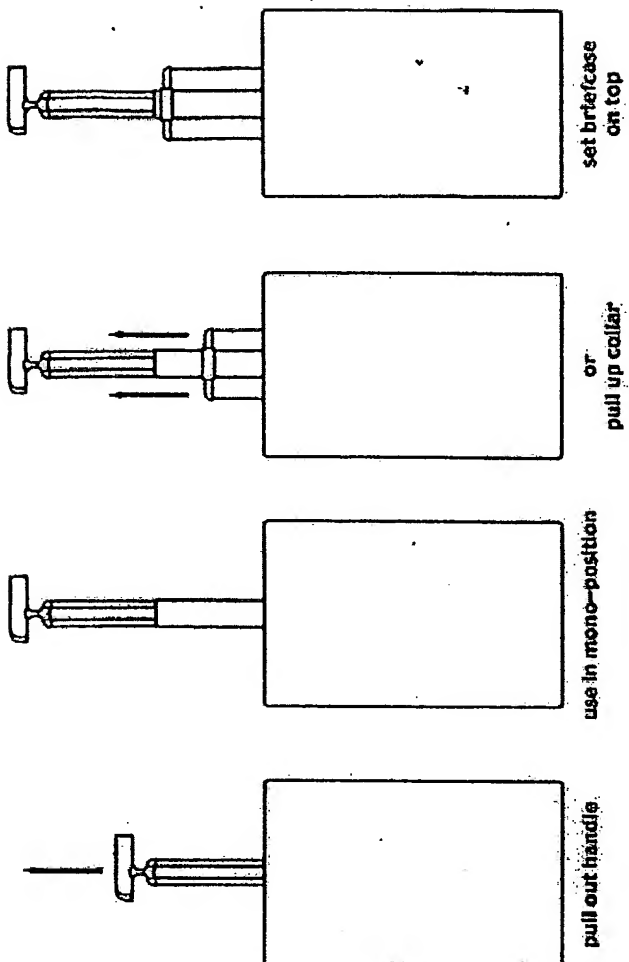
**The following are attached and made a part hereof:****Attachment A:** June 8, 2001 sketches of TKO Handle System.**Attachment B** August 9, 2001 computer generated image of TKO Handle System.**Attachment C:** October 17, 2001 photographs of prototype for TKO Handle System.



collar and slide assembly.  
push button to release  
and slide back down.



rollers guide the steel cable  
in and out of the assembly  
by two sliding collars.

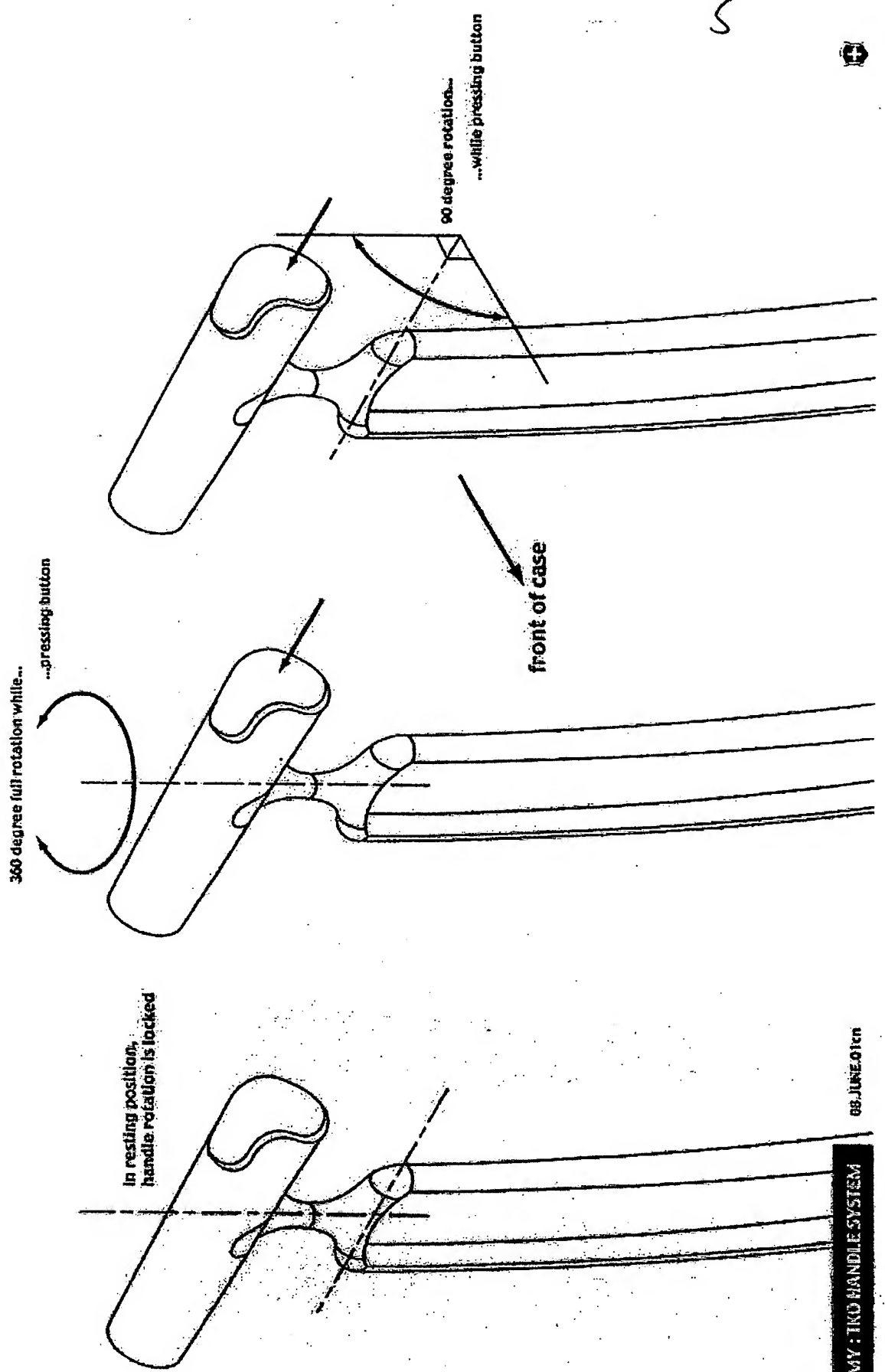


pull out handle

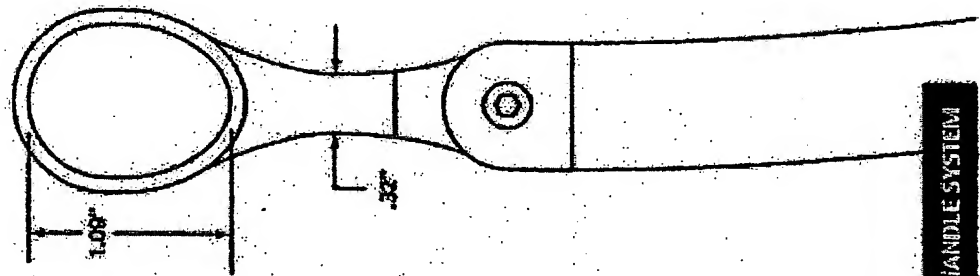
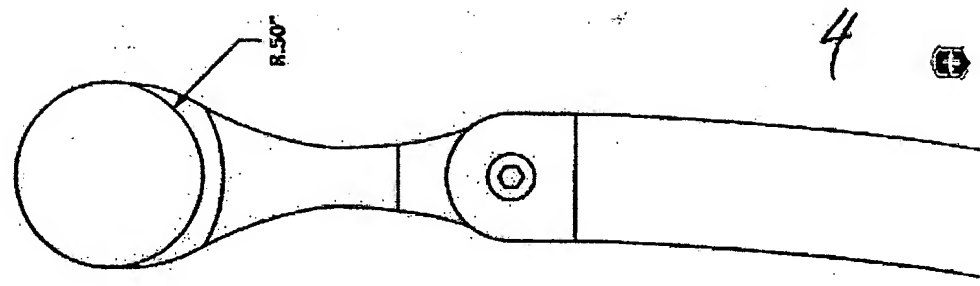
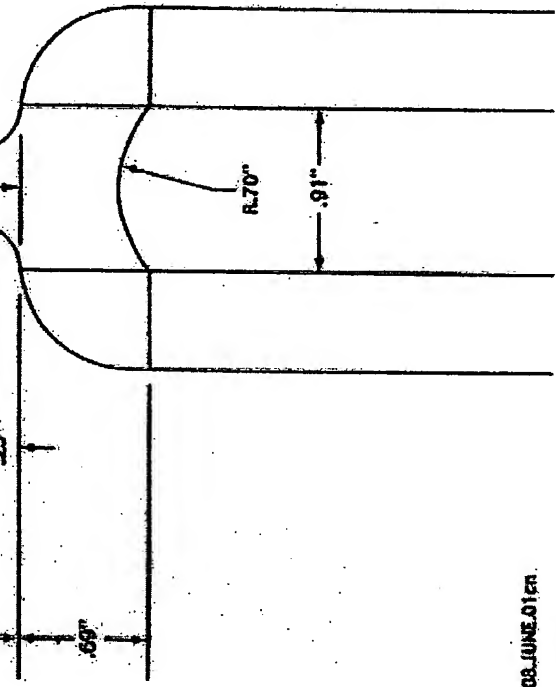
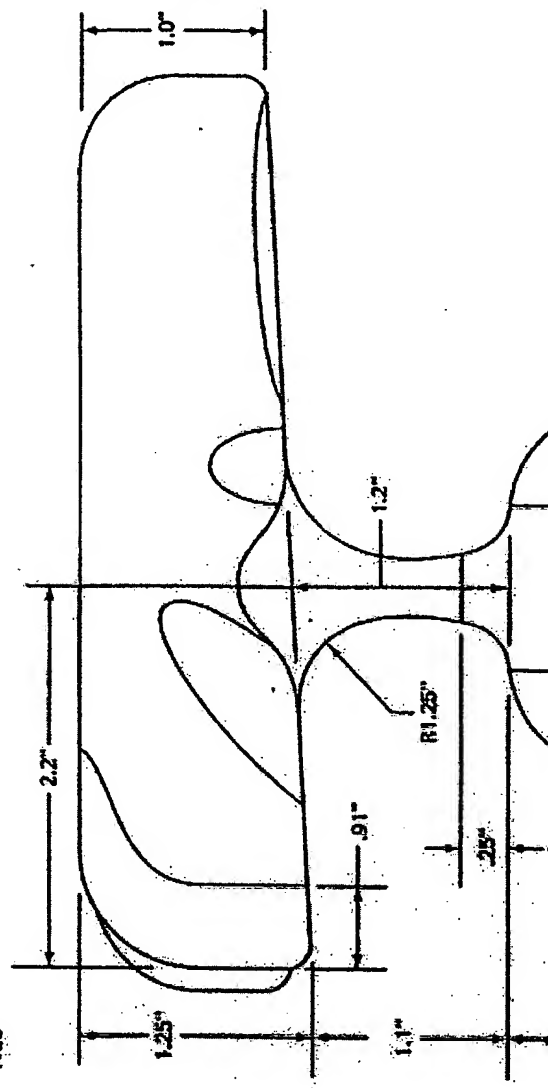
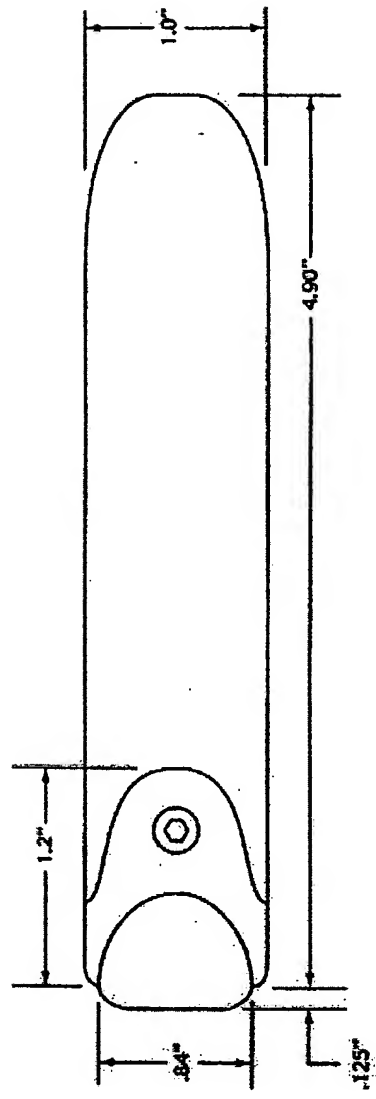
use in mono-position

or  
pull up collar

set briefcase  
on top



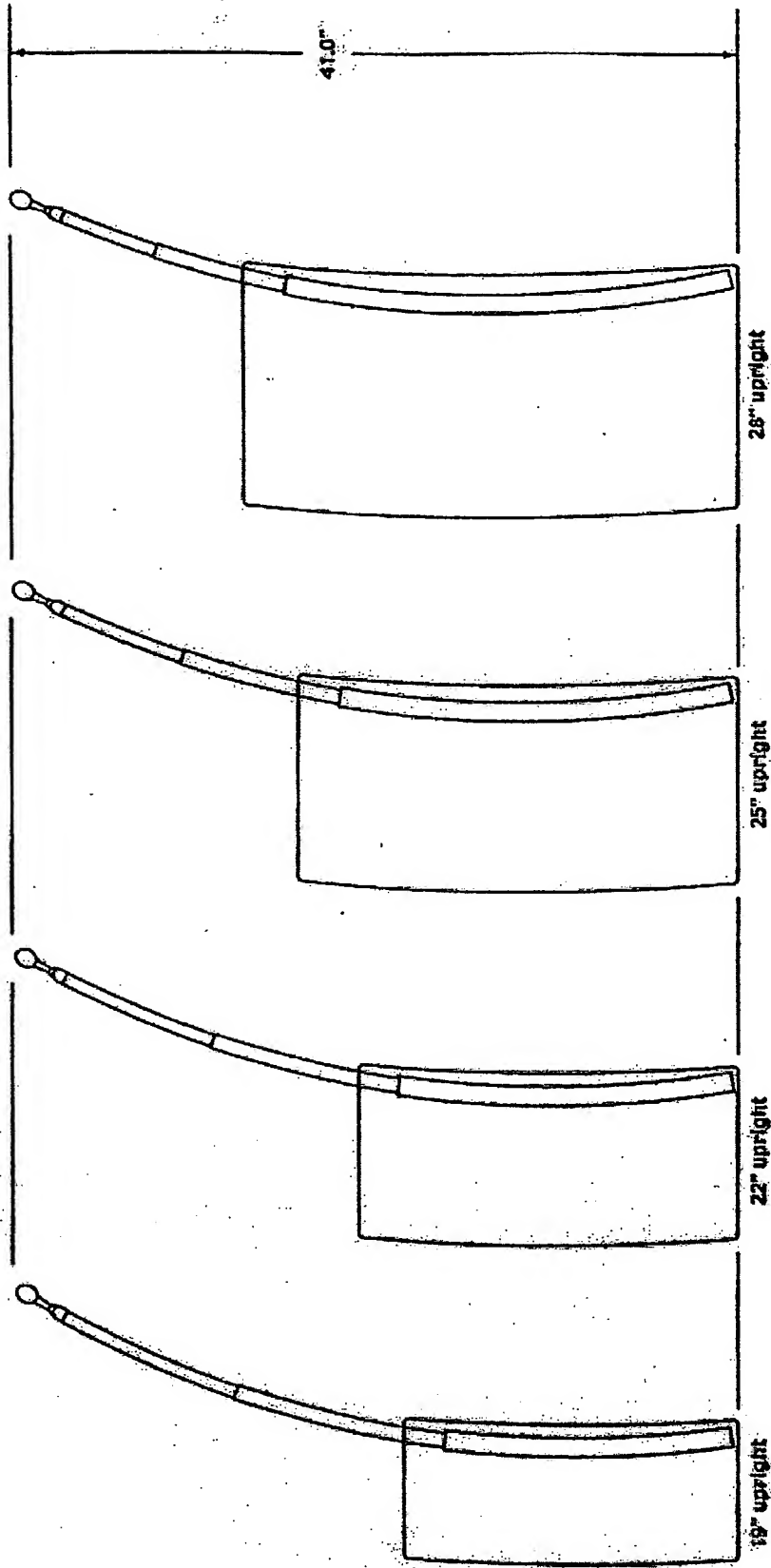
4



08.JUNE.01cm

SWISS ARMY : TKO HANDLE SYSTEM

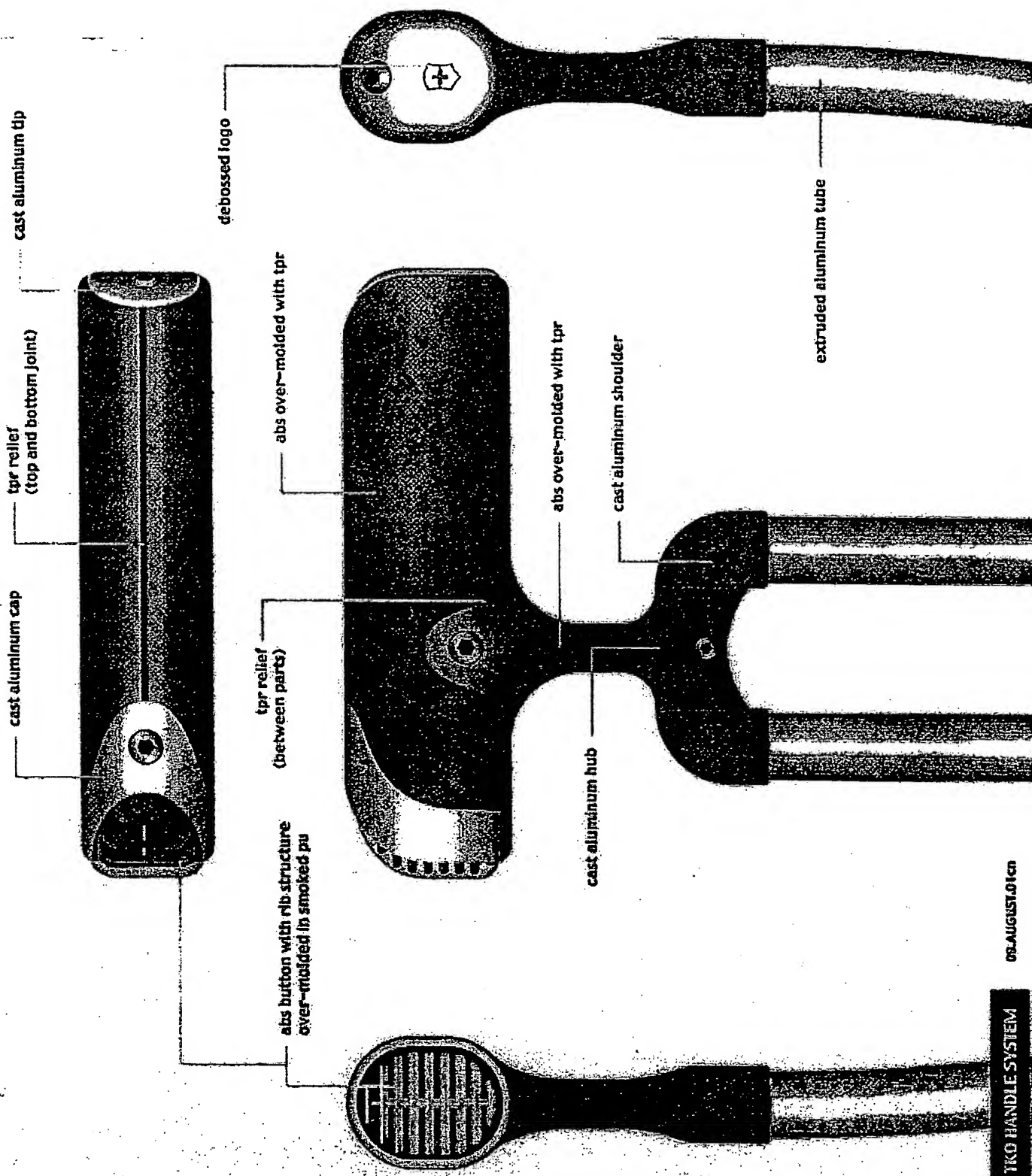
190 cm radius and three stages on all handle assemblies

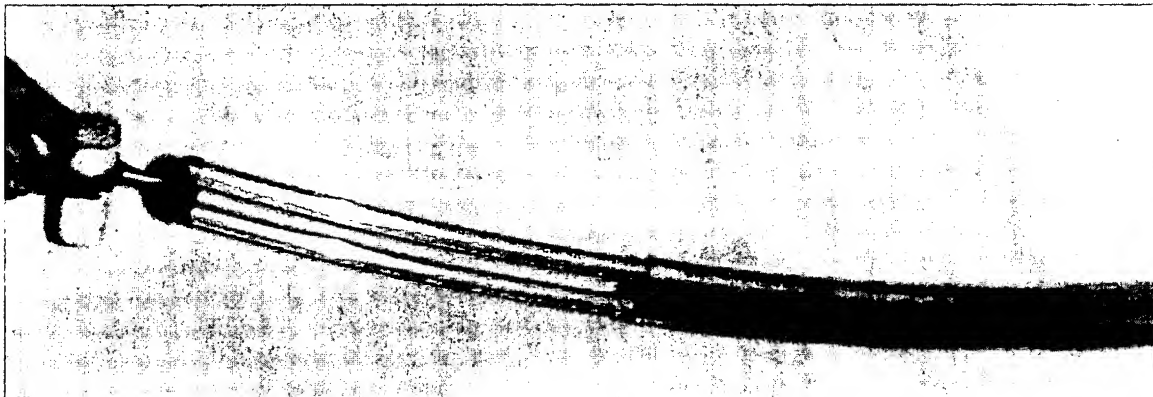
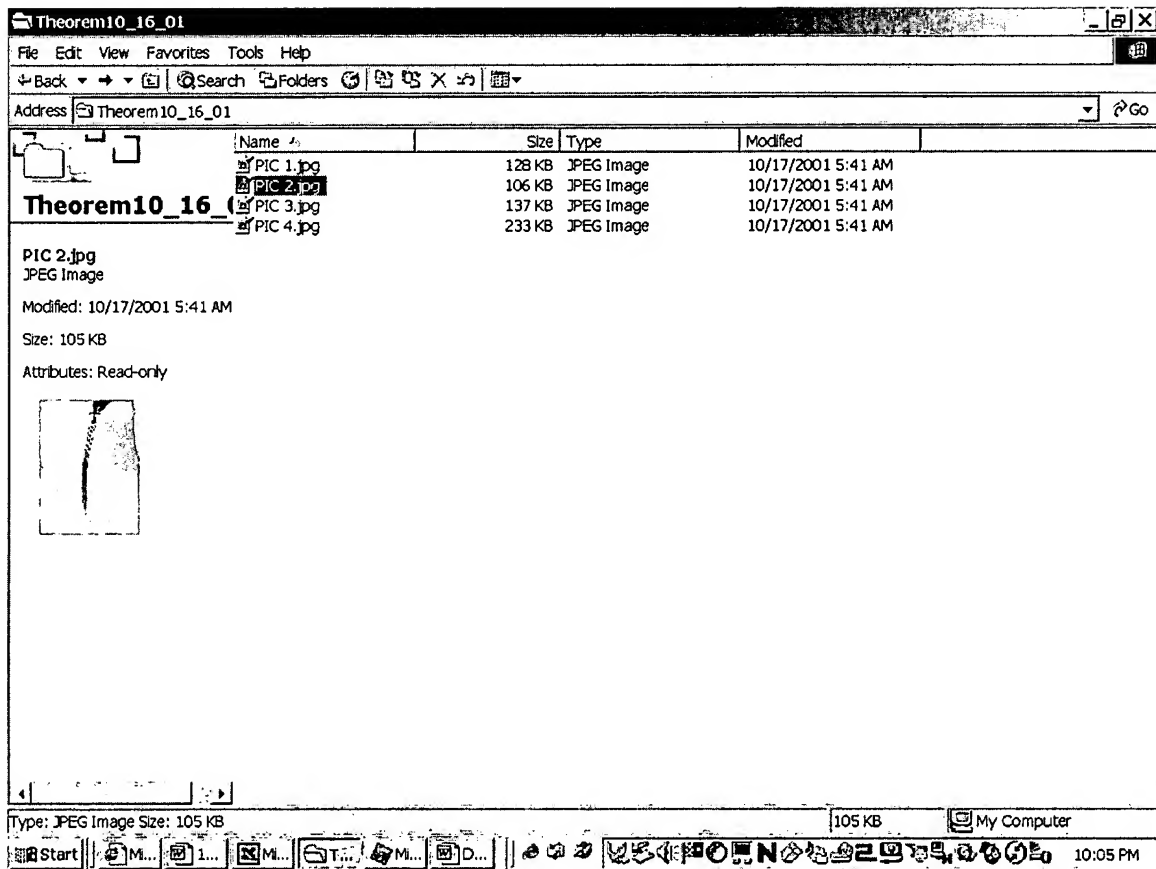


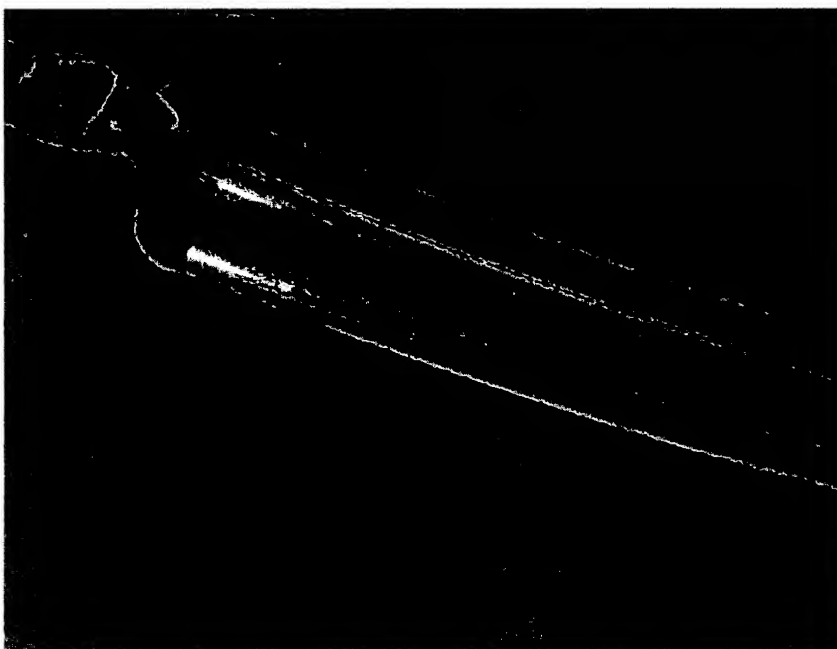
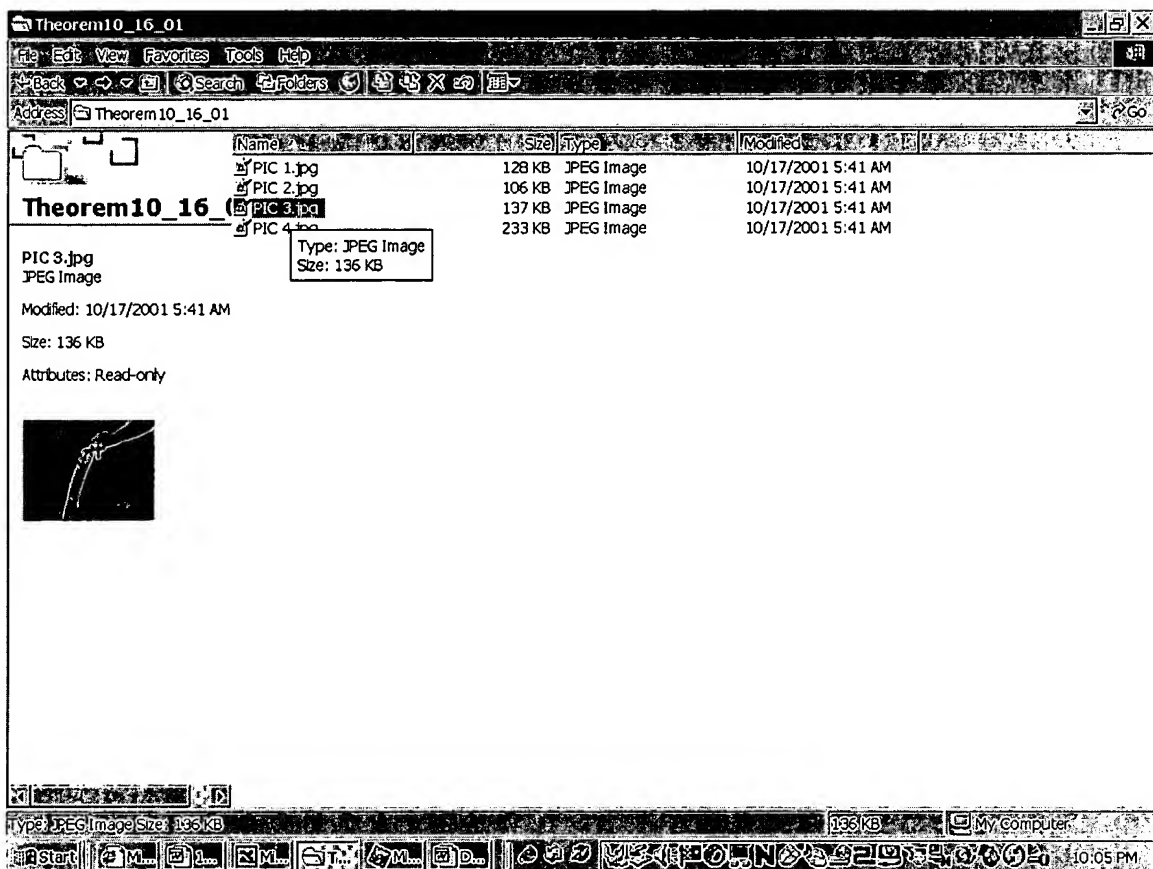
3











Thorem10\_16\_01

File Edit View Favorites Tools Help

Back Forward Stop Search Folders


Address Theorem10\_16\_01

Name	Size	Type	Modified
PIC 1.jpg	128 KB	JPEG Image	10/17/2001 5:41 AM
PIC 2.jpg	106 KB	JPEG Image	10/17/2001 5:41 AM
PIC 3.jpg	137 KB	JPEG Image	10/17/2001 5:41 AM
PIC 4.jpg	233 KB	JPEG Image	10/17/2001 5:41 AM

**Theorem10\_16\_01**

PIC 4.jpg  
JPEG Image  
Modified: 10/17/2001 5:41 AM  
Size: 232 KB  
Attributes: Read-only

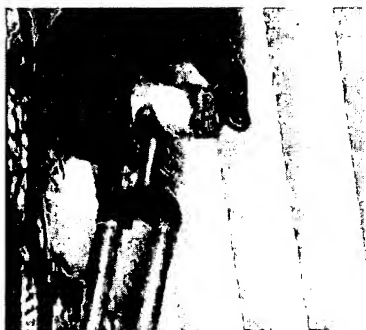
Type: JPEG Image  
Size: 232 KB



Type: JPEG Image Size: 232 KB

232 KB My Computer

Start M... I... M... T... M... D... 10:05 PM



**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

**BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ BLACK BORDERS
- ☐ IMAGE CUT OFF AT TOP, BOTTOM OR SIDES
- ☐ FADED TEXT OR DRAWING
- ☒ BLURRED OR ILLEGIBLE TEXT OR DRAWING
- ☐ SKEWED/SLANTED IMAGES
- ☐ COLOR OR BLACK AND WHITE PHOTOGRAPHS
- ☐ GRAY SCALE DOCUMENTS
- ☒ LINES OR MARKS ON ORIGINAL DOCUMENT
- ☐ REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY
- ☐ OTHER: \_\_\_\_\_

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**